

Langbord v. US Dept. of Treasury, et al.

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<p>1 Q. As that term is used here in the</p> <p>2 letter.</p> <p>3 A. I identified them as the issues that</p> <p>4 were litigated in the Fenton action, which were the</p> <p>5 circumstances surrounding the coins leaving the</p> <p>6 Mint and whether they were subject to forfeiture by</p> <p>7 the government.</p> <p>8 Q. And title was also an issue; correct?</p> <p>9 A. I - - I include that under the rubric</p> <p>10 of whether they are subject to forfeiture.</p> <p>11 Q. Does it also fall under the rubric of</p> <p>12 whether they were - - how they left the Mint?</p> <p>13 That's how the Barnard and the judge</p> <p>14 in the summary judgment argument addressed it in</p> <p>15 terms of the probative - -</p> <p>16 A. I think that's one of the issues that</p> <p>17 gets resolved if you have a settlement.</p> <p>18 Q. But who owns them?</p> <p>19 A. Disputes about how and what can be</p> <p>20 proven about how they lost the coin - - how they</p> <p>21 left the Mint.</p> <p>22 Q. Okay. Now, in the second paragraph</p> <p>23 there's - - this is the second full sentence, in</p> <p>24 this letter you're attempting to - - this is the</p> <p>25 first letter after the June meeting; right?</p>	<p>1 will not be able to show how the '33 Double Eagles</p> <p>2 left the Mint over seventy years ago and the coins</p> <p>3 are subject to forfeiture. I believe that covers</p> <p>4 they would not be able to seek forfeiture of those</p> <p>5 coins from the Langbords.</p> <p>6 MR. SWEET: That's not what my</p> <p>7 question is.</p> <p>8 BY MR. SWEET: (Continued)</p> <p>9 Q. I'm asking here factually, do you</p> <p>10 argue or do you state here, anywhere in this</p> <p>11 letter, not just among those four sub-paragraphs,</p> <p>12 but anywhere, that the facts supporting the</p> <p>13 Langbords' purported ownership, having title of the</p> <p>14 1933 Double Eagles - -</p> <p>15 A. My memory is, point 4 is the</p> <p>16 government cannot show that the - - how the coins</p> <p>17 left the Mint or that the coins are otherwise</p> <p>18 subject to forfeiture.</p> <p>19 I mean, yes.</p> <p>20 Q. Is that the only place?</p> <p>21 A. I discuss that in the body of the - -</p> <p>22 of the brief.</p> <p>23 Q. The brief, the letter?</p> <p>24 A. The letter.</p> <p>25 Q. And where is that?</p>
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<p>1 A. Correct.</p> <p>2 Q. And here you're trying to tell the</p> <p>3 judge - - tell the government why it made a</p> <p>4 mistake.</p> <p>5 Correct?</p> <p>6 MR. TIRSCHWELL: Objection as to what</p> <p>7 he's attempting to do.</p> <p>8 BY MR. SWEET: (Continued)</p> <p>9 Q. In the second paragraph you say, "The</p> <p>10 government's position wholly ignores," and you</p> <p>11 mention one, two, three, four, there are four</p> <p>12 sub-parts that you mention; right?</p> <p>13 MR. TIRSCHWELL: The third paragraph?</p> <p>14 MR. SWEET: This is the second - -</p> <p>15 third paragraph, yes.</p> <p>16 THE WITNESS: Yes, it identifies four</p> <p>17 sub-parts after the sentence begins, "The</p> <p>18 government's position wholly ignores."</p> <p>19 Q. Now, nowhere, in none of those four</p> <p>20 purported facts does it state that the Langbords</p> <p>21 owned the Double Eagles.</p> <p>22 A. I disagree with that.</p> <p>23 Q. Or the - - oh, which one would that</p> <p>24 come up in?</p> <p>25 A. I believe FOAIQ, that the government</p>	<p>1 A. The last paragraph, when I said,</p> <p>2 "final" - - second to last paragraph, "There is no</p> <p>3 basis for the government to seek forfeiture of the</p> <p>4 Langbord family's 1933 Double Eagles," referring to</p> <p>5 the Langbord family's 1933 Double Eagles.</p> <p>6 Q. So, the only place where this letter</p> <p>7 talks about - -</p> <p>8 A. And then it goes on to make the</p> <p>9 point.</p> <p>10 I'm sorry.</p> <p>11 Q. The only place where this letter</p> <p>12 attempts to set forth the language about the</p> <p>13 Langbords' ownership is in the first page, sub four</p> <p>14 of the third paragraph, and the reference to the</p> <p>15 Langbord family's Double Eagles?</p> <p>16 A. I disagree with your characterization</p> <p>17 of what this letter does.</p> <p>18 Q. Just show me somewhere else in the</p> <p>19 letter you're referring to?</p> <p>20 MR. TIRSCHWELL: Read the whole</p> <p>21 letter and then you can note all the places</p> <p>22 that refer to the Langbords' '33 Double</p> <p>23 Eagles.</p> <p>24 THE WITNESS: What I am - - what I</p> <p>25 have - - I'll read the article, but - - let</p>

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<p>1 me read it and I will. 2 (Witness reviews the exhibit.) 3 BY MR. SWEET: (Continued) 4 Q. What I'm looking for is where you 5 state that the Langbords own. 6 A. Let's mark through. 7 Second paragraph, second sentence, 8 "On September 22nd, 2004, the Langbord family, 9 while reserving all of their rights to the coins, 10 made their 1933 Double Eagles available to the 11 Mint." 12 Q. So, you say that word "their"? 13 A. I think it's very clear. 14 Q. The word "their" is what you're 15 saying? 16 A. It's referring to the Langbord 17 family's 1933 Double Eagles. 18 Q. Okay. 19 A. And again, at the end of that 20 paragraph, it refers to the Langbords' 1933 Double 21 Eagles. 22 Third paragraph, as I mentioned, 23 refers to the fact that the government cannot show 24 the coins are subject to forfeiture. 25 I'm sorry.</p>	<p>1 rather than an explicit discussion about ownership? 2 A. No, I think there's an explicit 3 discussion -- again, this is a letter -- well, I 4 won't characterize the letter. 5 I go to the first paragraph of the 6 second page. 7 "The Mint's apparent decision to 8 respond to the Langbords family's good faith 9 efforts by attempting to take their 1933 Double 10 Eagles will certainly discourage others in the 11 future from cooperating with the Mint regarding 12 numismatic rarities." 13 Then the next paragraph talks about 14 other coins of numismatic interest with colorful 15 backgrounds, that have been bought and sold and the 16 numismatic community has been permitted to enjoy. 17 Q. That has nothing to do with the 18 Langbords' purported ownership though; right? A. 19 The point I'm making, the analogy is the government 20 has allowed private citizens to own other coins 21 that are indistinguishable from the '33 Double 22 Eagles. 23 Q. By analogy? Anything else? 24 A. I'm still going through the document. 25 Then I say, at the end of that</p>
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<p>1 Above that, third paragraph, first 2 sentence, "The Mint has rejected their good faith 3 efforts to amicably resolve any issues relating to 4 their coins," the emphasis on "their coins." 5 "Instead has taken the untenable 6 position that it will attempt to retain their 1933 7 Double Eagles." 8 Q. Why don't you slow down for the court 9 reporter; okay? 10 Go ahead. 11 A. Continuing to the next sentence, "The 12 government's position wholly ignores that the Mint 13 only became aware of the coins because the Langbord 14 family freely brought their coins to the 15 government's attention," with the emphasis again on 16 "their coins." 17 Q. You say, "the emphasis" again. 18 You're putting that emphasis there. It's not in 19 the letter. 20 A. I want the record to reflect how I'm 21 reading, that's what I'm emphasizing. 22 Q. To make sure what you're emphasizing? 23 A. The possessory word, the ownership 24 word. 25 Q. It's really the possessory word</p>	<p>1 paragraph, "Nonetheless, the government took" - - 2 this is the end of the second paragraph, on the 3 second page - - "Nonetheless, the government took 4 no action to interfere with this or any other sale 5 of the 1913 Liberty Head nickel it" - - I'm sorry - 6 - "the Liberty nickel, or with the ownership of 7 this coin within the numismatic community," to make 8 clear the analogy. 9 Then again, the top of the page 3, 10 "the Mint's decision to try to prevent collectors 11 from freely trading these numismatic legends is 12 entirely inconsistent with the Mint's own practices 13 has been policy and unjustified as a matter of fact 14 and law," again referring to the Mint's decision to 15 try to prevent the Langbords from freely trading 16 the '33 Double Eagles and that it's not only 17 inconsistent with practice, but unjustified as a 18 matter of law and a matter of fact. 19 Then the next paragraph, "Finally, 20 there's no basis for the government to seek 21 forfeiture of the Langbord family's '33 Double 22 Eagles." 23 Again, the reference, again, "The 24 government will not be able to establish that the 25 coins are subject to forfeiture."</p>

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<p>1 MR. SWEET: (Continued)</p> <p>2 Q. So, Mr. Berke - -</p> <p>3 A. I'm not done.</p> <p>4 Q. I thought you were.</p> <p>5 A. I'm not done.</p> <p>6 Q. Go for it.</p> <p>7 A. There's something in every paragraph.</p> <p>8 Q. Go for it. The case is hanging on a</p> <p>9 preposition.</p> <p>10 Go for it.</p> <p>11 A. Otherwise, the last sentence, "For</p> <p>12 all these reasons, we are urging the Mint to</p> <p>13 re-consider their position. Otherwise, now that</p> <p>14 the testing of their 1933 Double Eagles has been</p> <p>15 completed, the Langbord family requests their coins</p> <p>16 be immediately returned."</p> <p>17 Q. So, Mr. Berke, there is no discussion</p> <p>18 in this letter about how the Langbords came to have</p> <p>19 purported title of the Double Eagles, is there?</p> <p>20 MR. TIRSCHWELL: Objection to the</p> <p>21 form, "came to have purported."</p> <p>22 MR. SWEET: Okay.</p> <p>23 Q. Are you going to answer or no?</p> <p>24 MR. TIRSCHWELL: You can answer.</p> <p>25 I don't know what that means.</p>	<p>1 MR. SWEET: Which we'll mark as Berke-8.</p> <p>2</p> <p>3 (Letter, 1 page, so marked Berke</p> <p>4 Exhibit 8 for identification by counsel.)</p> <p>5 (Handed to the witness.)</p> <p>6 Q. Do you recall this document?</p> <p>7 A. I do.</p> <p>8 Q. What is it?</p> <p>9 A. This is a seized asset claim filed on</p> <p>10 behalf of the Langbords, dated September 9th, 2005,</p> <p>11 and it has a cover letter.</p> <p>12 Q. Okay. Regarding the - - in the</p> <p>13 letter itself, the sentence that starts, "From the</p> <p>14 out - - from the outset the Langbord family was</p> <p>15 very explicit regarding their ownership of these</p> <p>16 coins," could you tell me, briefly, was the very</p> <p>17 explicit, was that in oral communications or was</p> <p>18 that in correspondence?</p> <p>19 A. In our discussions at the initial</p> <p>20 meeting and then in the letter that we had</p> <p>21 discussed and that I had sent to confirm that they</p> <p>22 - - the - - the circumstances surrounding the</p> <p>23 transfer and reservations of all their rights to</p> <p>24 their coins.</p> <p>25 Q. The September 21 letter?</p>
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<p>1 THE WITNESS: Well, I would say</p> <p>2 there's a reference to how the Langbord</p> <p>3 family came into possession of these</p> <p>4 numismatic treasures and that had been</p> <p>5 discussed previously, so the Mint was aware</p> <p>6 of, you know, how they - -</p> <p>7 BY MR. SWEET: (Continued)</p> <p>8 Q. I'm not saying that they weren't - -</p> <p>9 A. How they came to have these '33</p> <p>10 Double Eagles.</p> <p>11 And that's referenced back, and I</p> <p>12 believe that was, obviously, prior discussions and</p> <p>13 that information was known.</p> <p>14 Q. Sub-paragraph 4, when you say that</p> <p>15 "The government will not be able to show how the</p> <p>16 1933 Double Eagles left the Mint over 70 years ago</p> <p>17 or that the coins are subject to forfeiture," how -</p> <p>18 - whether the coins are subject to forfeiture, that</p> <p>19 hinges on a lot more than just title; right?</p> <p>20 MR. TIRSCHWELL: Objection.</p> <p>21 I'm instructing him not to answer a</p> <p>22 legal question.</p> <p>23 BY MR. SWEET: (Continued)</p> <p>24 Q. Let's look at your letter of</p> <p>25 September 9th.</p>	<p>1 A. That's correct.</p> <p>2 Q. And you claim that that letter makes</p> <p>3 it very explicit that they had an ownership</p> <p>4 interest?</p> <p>5 A. No.</p> <p>6 I didn't only refer to that letter; I</p> <p>7 referred to that letter and prior discussions; yes.</p> <p>8 Q. Okay. Again we have the reference to</p> <p>9 "resolving any issues relating to their coins."</p> <p>10 Any issues, that refers to the same</p> <p>11 issues you described with regard to the last</p> <p>12 letter?</p> <p>13 A. Again, the settlement of any disputed</p> <p>14 issues related to the coins to avoid litigation.</p> <p>15 Q. If the Langbords owned the Double</p> <p>16 Eagles, why would they engage in any discussions</p> <p>17 with the United States?</p> <p>18 MR. TIRSCHWELL: Objection.</p> <p>19 I instruct you not to answer.</p> <p>20 BY MR. SWEET: (Continued)</p> <p>21 Q. Now, you styled this as a seized</p> <p>22 asset claim.</p> <p>23 At what point do you contend the</p> <p>24 seizure occurred?</p> <p>25 MR. TIRSCHWELL: Objection.</p>

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<p>1 Instruction not to answer.</p> <p>2 BY MR. SWEET: (Continued)</p> <p>3 Q. You contend - -</p> <p>4 MR. TIRSCHWELL: It's a legal</p> <p>5 question.</p> <p>6 BY MR. SWEET: (Continued)</p> <p>7 Q. You contend it was a seizure?</p> <p>8 MR. TIRSCHWELL: Objection.</p> <p>9 Instruction not to answer.</p> <p>10 BY MR. SWEET: (Continued)</p> <p>11 Q. Was the seizure on September 22nd or</p> <p>12 was the seizure June 2005?</p> <p>13 MR. TIRSCHWELL: Objection.</p> <p>14 It's a legal question.</p> <p>15 Instruction not to answer.</p> <p>16 MR. SWEET: Is there a point at the</p> <p>17 litigation where you'll actually disclose</p> <p>18 this information?</p> <p>19 MR. TIRSCHWELL: Not through</p> <p>20 deposition of opposing counsel.</p> <p>21 MR. SWEET: Through deposition of Mr.</p> <p>22 Langbord, can we expect that?</p> <p>23 MR. TIRSCHWELL: Not through the</p> <p>24 deposition of Mr. Berke. That's all we need</p> <p>25 to discuss right now.</p>	<p>1 MR. SWEET: Up until the time he</p> <p>2 wrote the letter.</p> <p>3 MR. TIRSCHWELL: I mean, we had this</p> <p>4 question before and I think the problem we</p> <p>5 had was characterizing the interactions as</p> <p>6 opposed to simply describing what they were.</p> <p>7 I'm not sure why it matters how it's</p> <p>8 characterized.</p> <p>9 MR. SWEET: Because you brought a due</p> <p>10 process claim and you're suggesting that the</p> <p>11 Mint has denied the Langbords of certain</p> <p>12 rights and it's based upon a purported</p> <p>13 agreement that the Mint doesn't believe ever</p> <p>14 existed.</p> <p>15 So, I'm trying to understand if there</p> <p>16 are issues that Mr. Berke contends where he</p> <p>17 was misled, lied to, misdirected, or in any</p> <p>18 way mistreated by the only two people from</p> <p>19 the Mint who he ever had any negotiations</p> <p>20 with. I need to know. I'm trying to explore</p> <p>21 that.</p> <p>22 And without knowing that, I don't see</p> <p>23 how you can possibly pursue a claim - -</p> <p>24 MR. TIRSCHWELL: Well - -</p> <p>25 MR. SWEET: Of due process violation.</p>
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<p>1 BY MR. SWEET: (Continued)</p> <p>2 Q. There's another letter, Berke 9.</p> <p>3 (Letter, 1 page, so marked Berke</p> <p>4 Exhibit Number 9 by counsel.)</p> <p>5 (Handed to the witness.)</p> <p>6 (Witness reviews the exhibit.)</p> <p>7 A. Okay.</p> <p>8 Q. This is your letter; correct?</p> <p>9 A. It is a letter signed by me, sent to</p> <p>10 Dan Shaver on December 6th, 2005, cc to Arnold I.</p> <p>11 Haven, Esquire.</p> <p>12 Q. And he was general counsel at the</p> <p>13 Treasury Department?</p> <p>14 A. At that time, yes.</p> <p>15 Q. Okay.</p> <p>16 A. I'm -- yes.</p> <p>17 Q. This is the letter that references,</p> <p>18 you say, "I have always believed that you and I</p> <p>19 have had a professional, frank and honest</p> <p>20 relationship."</p> <p>21 Up until this point, did you still</p> <p>22 believe that you and Mr. Shaver were having a</p> <p>23 professional, frank and honest relationship?</p> <p>24 MR. TIRSCHWELL: Up until before he</p> <p>25 wrote the letter?</p>	<p>1 MR. TIRSCHWELL: A due process claim</p> <p>2 is that the coins were confiscated without</p> <p>3 due process, which the due process is, you</p> <p>4 know, described in the complaint.</p> <p>5 MR. SWEET: Well, you --</p> <p>6 MR. TIRSCHWELL: I don't think the</p> <p>7 process is Mr. Shaver or Mr. Weinman, you</p> <p>8 know, were supposed to do something</p> <p>9 additional.</p> <p>10 But I don't see how that follows.</p> <p>11 MR. SWEET: Will you stipulate now</p> <p>12 that Mr. Shaver and Mr. Weinman did not</p> <p>13 mislead, misdirect, falsely induce or in any</p> <p>14 way lie to Mr. Berke in connection with the</p> <p>15 surrender of the Double Eagles and the</p> <p>16 transactions, the negotiations, the</p> <p>17 discussions surrounding them?</p> <p>18 If you can stipulate to that, I'll</p> <p>19 stop asking these questions.</p> <p>20 (Pause.)</p> <p>21 MR. SWEET: Do you want to have a</p> <p>22 minute to think about it?</p> <p>23 MR. TIRSCHWELL: Sure. Let's take a</p> <p>24 five-minute break.</p> <p>25 (Recess: 5:13 p.m.)</p>

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<p>1 (Resumed: 5:28 p.m.)</p> <p>2 (Ms. Romano is not present in the</p> <p>3 conference room.)</p> <p>4 MR. SWEET: Can we have the last</p> <p>5 question read back?</p> <p>6 (The requested material was read</p> <p>7 aloud.)</p> <p>8 THE WITNESS: What I can say to that</p> <p>9 question is, to the extent that the</p> <p>10 government was saying, in its December 5th</p> <p>11 letter, that the Langbord family had waived</p> <p>12 or relinquished any rights as a result of the</p> <p>13 transfer that occurred on September 22nd,</p> <p>14 that that would have been inconsistent with</p> <p>15 the agreement and our dealings prior to the</p> <p>16 transfer on September 22nd.</p> <p>17 That is what I'm communicating.</p> <p>18 And if the government, by their</p> <p>19 letter, intended then or at any point to</p> <p>20 argue that there was any waiver or</p> <p>21 relinquishment of those rights, that, I would</p> <p>22 believe, that, I believed, was inconsistent</p> <p>23 with the professional, frank and honest</p> <p>24 relationship that I had thought had defined</p> <p>25 our relationship previously.</p>	<p>1 as ownership right, possessory rights or any other</p> <p>2 rights as the letter refers, any other rights or</p> <p>3 remedies that existed at that time.</p> <p>4 (Ms. Romano returned to the</p> <p>5 conference room.)</p> <p>6 Q. Okay. And would you agree that if a</p> <p>7 right did not exist prior to the transfer, that</p> <p>8 right would not - a right would not be created</p> <p>9 following the transfer?</p> <p>10 A. Well -</p> <p>11 MR. TIRSCHWELL: I mean, that one I'm</p> <p>12 going to instruct him not to answer.</p> <p>13 That's a legal question.</p> <p>14 Whether he believed there was an</p> <p>15 agreement that they would gain right after</p> <p>16 the transfer, you can ask him that. But you</p> <p>17 probably know the answer.</p> <p>18 But, I mean, the way you phrased it</p> <p>19 is a legal question.</p> <p>20 MR. SWEET: We'll go on.</p> <p>21 Q. I'm going to show you a document</p> <p>22 we're marking as Berke 10.</p> <p>23 (Claim for damages, so marked Berke</p> <p>24 Exhibit 10 by counsel.)</p> <p>25 (Handed to the witness.)</p>
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<p>1 MR. SWEET: Okay. I'm going to ask</p> <p>2 you a question about that; hopefully you'll</p> <p>3 answer it.</p> <p>4 BY MR. SWEET: (Continued)</p> <p>5 Q. Is it your contention that - - then</p> <p>6 that the reservation of rights was such that it</p> <p>7 would allow the Langbords to be in a position that</p> <p>8 they were in before the transfer of the Double</p> <p>9 Eagles?</p> <p>10 A. The understanding is that by allowing</p> <p>11 these discussions to go forward and allowing the</p> <p>12 government to take the coins, authenticate them, to</p> <p>13 see if we could reach an agreement to resolve</p> <p>14 issues outside of litigation, the Langbords would</p> <p>15 not be in any way relinquishing or giving up the</p> <p>16 rights that they possessed to those coins prior to</p> <p>17 the transfer.</p> <p>18 Q. Okay. Would that include the rights</p> <p>19 to continue to possess the 1933 Double Eagles?</p> <p>20 A. Well, what I would say, whatever that</p> <p>21 they - - they - - that the understanding was, that</p> <p>22 all their rights would be preserved as they existed</p> <p>23 prior to the transfer. That was the understanding</p> <p>24 and terms upon which the transfer was made and that</p> <p>25 would include right, whether they are characterized</p>	<p>1 BY MR. SWEET: (Continued)</p> <p>2 Q. Can you identify this document?</p> <p>3 A. It's a document dated May 8th, 2006,</p> <p>4 captioned, "Claim for Damage - 1933 Double Eagle</p> <p>5 Coins," addressed to Daniel P. Shaver, Chief</p> <p>6 Counsel at the Mint, and David A. Lebryk, Deputy</p> <p>7 Director of the Mint.</p> <p>8 It's signed by me, with</p> <p>9 certifications.</p> <p>10 MR. TIRSCHWELL: Can I get a copy of</p> <p>11 that?</p> <p>12 MR. SWEET: Oh, I'm sorry.</p> <p>13 We may come back to these; we may</p> <p>14 not.</p> <p>15 I'm marking for identification Berke</p> <p>16 11.</p> <p>17 (Letter, 1 page, so marked Berke</p> <p>18 Exhibit 11 for identification.)</p> <p>19 (Handed to the witness.)</p> <p>20 Q. Do you recognize that document?</p> <p>21 (Witness reviews the exhibit.)</p> <p>22 A. This is a June 29th, 2006 letter from</p> <p>23 me to Dan Shaver, in response to a June 6, 2006</p> <p>24 letter from Mr. Shaver regarding our claim for</p> <p>25 damage.</p>

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<p>1 Q. Okay. Now, the prior letter, I'll</p> <p>2 take it out, B-10; right?</p> <p>3 Actually, we don't have Mr. Shaver's</p> <p>4 letter.</p> <p>5 But there's a letter from Mr. Shaver</p> <p>6 asking you for additional information about the</p> <p>7 Langbords' purported ownership interest in the</p> <p>8 Double Eagles; right?</p> <p>9 A. I recall there was a letter of June</p> <p>10 6th.</p> <p>11 I don't know the precise question in</p> <p>12 my mind.</p> <p>13 Q. Okay.</p> <p>14 A. But that was clearly in response to</p> <p>15 that.</p> <p>16 Q. And you're attempting now to - - you</p> <p>17 can see from the letter, that here you're trying to</p> <p>18 provide further information to support the claim of</p> <p>19 ownership.</p> <p>20 Is that an accurate characterization?</p> <p>21 A. You know, I think the letter speaks</p> <p>22 for itself.</p> <p>23 I would just say this is a letter</p> <p>24 provided in response to Mr. Shaver's June 6th, 2006</p> <p>25 letter.</p>	<p>1 mental legal thoughts about the case.</p> <p>2 MR. SWEET: It's calling for a fact,</p> <p>3 his clarification of a fact issue in this</p> <p>4 letter.</p> <p>5 MR. TIRSCHWELL: I've stated my</p> <p>6 objection.</p> <p>7 BY MR. SWEET: (Continued)</p> <p>8 Q. In paragraph 2, there's a reference</p> <p>9 to a number of transactions of other coins of - -</p> <p>10 well, coins, I should say. I'm not familiar with</p> <p>11 all of them.</p> <p>12 You see there's one that sold - -</p> <p>13 there's a 1913 Liberty Head nickel that sold for 3</p> <p>14 million dollars in 2004.</p> <p>15 Do you know if that was before or</p> <p>16 after the transfer of the Double Eagles to the</p> <p>17 United States?</p> <p>18 A. As I sit here today, I don't recall.</p> <p>19 Q. Okay. Then the Brasher coin that was</p> <p>20 sold in January 2005, for 2.9 million dollars.</p> <p>21 Do you have any reason to believe</p> <p>22 that the government's actions with respect to the</p> <p>23 1933 Double Eagles that had been in the possession</p> <p>24 of the Langbords affected the sale of this coin?</p> <p>25 Do you have any facts concerning</p>
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<p>1 Q. In paragraph 1, you say that the</p> <p>2 coins are the property of Joan, Roy and David</p> <p>3 Langbord, by virtue of their being the ultimate</p> <p>4 beneficiaries under the wills of Elizabeth and</p> <p>5 Israel Switt.</p> <p>6 That turns out not to be correct;</p> <p>7 right?</p> <p>8 MR. TIRSCHWELL: Objection.</p> <p>9 MR. SWEET: It is a factual matter.</p> <p>10 MR. TIRSCHWELL: It's not.</p> <p>11 BY MR. SWEET: (Continued)</p> <p>12 Q. You contend that's still correct?</p> <p>13 MR. TIRSCHWELL: We're not here to</p> <p>14 talk about what we contend in the case.</p> <p>15 BY MR. SWEET: (Continued)</p> <p>16 Q. Is there anything in this letter</p> <p>17 which you subsequently learned is incorrect, in</p> <p>18 paragraph 1?</p> <p>19 MR. TIRSCHWELL: We're not going to</p> <p>20 answer that question.</p> <p>21 MR. SWEET: Are you instructing him</p> <p>22 not to answer?</p> <p>23 MR. TIRSCHWELL: Yes.</p> <p>24 It calls for a legal analysis, legal</p> <p>25 strategy, thoughts about legal thoughts,</p>	<p>1 that?</p> <p>2 MR. TIRSCHWELL: Well, you can ask</p> <p>3 him does he have any facts concerning the</p> <p>4 settlement.</p> <p>5 MR. SWEET: Well, the government's</p> <p>6 activities with regard to the 1933 Double</p> <p>7 Eagles that had been in the possession of the</p> <p>8 Langbords had an affect on the sale price of</p> <p>9 the Brasher coin. It's a factual question.</p> <p>10 MR. TIRSCHWELL: Do you have any</p> <p>11 information, apart from conversations with</p> <p>12 your clients?</p> <p>13 THE WITNESS: I don't know, one way</p> <p>14 or the other.</p> <p>15 Q. The same question with respect to the</p> <p>16 1097 Ultra High Relief Double Eagle, which</p> <p>17 reportedly sold for 2.9 million dollars in 2005.</p> <p>18 A. Same answer.</p> <p>19 Q. Is there anything in this letter, as</p> <p>20 you sit here today, is there anything in this</p> <p>21 letter you can - - that is factually not correct?</p> <p>22 MR. TIRSCHWELL: That - - I'm going</p> <p>23 to instruct him not to answer that question</p> <p>24 to the extent it calls - -</p> <p>25 MR. SWEET: For him to?</p>

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<p>1 MR. TIRSCHWELL: For him to reveal</p> <p>2 either conversations with his clients, his</p> <p>3 legal analysis, his factual investigation of</p> <p>4 the case, all of which are protected.</p> <p>5 MR. SWEET: Are you instructing him</p> <p>6 not to answer whether there are any facts in</p> <p>7 this letter that he now knows are incorrect?</p> <p>8 MR. TIRSCHWELL: I think my</p> <p>9 instruction is clear.</p> <p>10 MR. SWEET: You didn't instruct him</p> <p>11 yet not to answer.</p> <p>12 MR. TIRSCHWELL: I did.</p> <p>13 MR. SWEET: Did you?</p> <p>14 MR. TIRSCHWELL: I said, I instruct</p> <p>15 him not answer, to the extent that answering</p> <p>16 would require him to disclose any</p> <p>17 conversation with his clients, any legal</p> <p>18 analysis or legal and factual investigation</p> <p>19 that he is aware of or which he participated,</p> <p>20 as well as counsel.</p> <p>21 THE WITNESS: I'm not able to answer</p> <p>22 the question, one way or the other then.</p> <p>23 BY MR. SWEET: (Continued)</p> <p>24 Q. I show you a letter identified as</p> <p>25 Berke 12.</p>	<p>1 to you that the Mint would find it helpful,</p> <p>2 "helpful," if you would tender evidence indicating</p> <p>3 the assessed value of the property based on another</p> <p>4 act of responsible citizenship, the payment of</p> <p>5 estate taxes, gift taxes, or inheritance taxes to</p> <p>6 the federal and state revenue authorities.</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Did you provide any such information</p> <p>10 to the government after it was requested?</p> <p>11 A. I believe our response as to this</p> <p>12 request is reflected in the third paragraph of my</p> <p>13 August 18th letter, which states, "Second, the</p> <p>14 Claim for Damage submitted on behalf of the</p> <p>15 Langbords' family," pursuant to the statutes, "on</p> <p>16 May 8th, 2006, has now been pending for over three</p> <p>17 months. Moreover, additional information related</p> <p>18 to this claim that you requested was provided to</p> <p>19 you on June 29th, 2006.</p> <p>20 "The Langbords have never provided</p> <p>21 more information than is required by statute,</p> <p>22 regulations or otherwise, and we request the</p> <p>23 government make a final determination with respect</p> <p>24 to this second claim."</p> <p>25 I should note, the letter refers to</p>
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<p>1 (Letter, 1 page, so marked Berke</p> <p>2 Exhibit 12 for identification by counsel.)</p> <p>3 (Handed to the witness.)</p> <p>4 (Witness reviews the exhibit.)</p> <p>5 Q. Are you familiar with this letter?</p> <p>6 A. I recognize this as a letter from me</p> <p>7 to Mr. Shaver, dated August 18th, 2006, responding</p> <p>8 to Mr. Shaver's August 15th, 2006, but I don't have</p> <p>9 a specific recollection of, as I sit here today, of</p> <p>10 Mr. Shaver's August 15th, 2006, letter.</p> <p>11 So, if you have a copy of that, that</p> <p>12 would help me to respond to questions about this</p> <p>13 letter.</p> <p>14 Q. I'm going to give you a copy of the</p> <p>15 August letter.</p> <p>16 MR. SWEET: We're not going to mark</p> <p>17 it now.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MR. SWEET: I don't see any need to</p> <p>20 mark it.</p> <p>21 (Handed to the witness.)</p> <p>22 (Witness reviews the exhibit.)</p> <p>23 BY MR. SWEET: (Continued)</p> <p>24 Q. Do you see, at the bottom of the</p> <p>25 August 15th letter from Mr. Shaver, where he says</p>	<p>1 the first claim as the - - as - - as the Statement</p> <p>2 F claim that had been filed on September 9th, 2005.</p> <p>3 Q. Okay?</p> <p>4 A. So, this is our response to the</p> <p>5 August 15th, 2006, a letter by Mr. Shaver.</p> <p>6 Q. So, my question is: Did you, in</p> <p>7 response to the August 15th letter, provide the</p> <p>8 information that Mr. Shaver specifically was</p> <p>9 requesting?</p> <p>10 And that would have been evidence of</p> <p>11 payment of estate tax, gifts tax or inheritance</p> <p>12 taxes to the federal and state revenue authorities</p> <p>13 in connection with the purported inheritance of the</p> <p>14 Double Eagles, under the wills of Israel Switt and</p> <p>15 Elizabeth?</p> <p>16 A. Obviously, without waiving any work</p> <p>17 property or any other privilege, the answer is no.</p> <p>18 Q. I want to go back to the statement</p> <p>19 that you made to the court, I think it's Berke 2,</p> <p>20 the statement to the court in the Fenton</p> <p>21 litigation, and you also made a statement to a</p> <p>22 reporter for the Washington Post, in 1996 - - if</p> <p>23 you want, I can show that, too - - in which you say</p> <p>24 there are a number of ways that the 1933 Double</p> <p>25 Eagles could have left the Mint, with authority.</p>

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<p>1 You can read the statement here, what 2 you told the Court in the Fenton case. 3 Could you tell us what those ways 4 were? 5 MR. TIRSCHWELL: Objection. 6 I'm instructing him not to answer. 7 That's what this litigation is about. 8 We'll present our proof at trial. 9 MR. SWEET: That will be your proof 10 at trial, but you won't let us know ahead of 11 time, before trial, what the purported way 12 that these things got out. 13 MR. TIRSCHWELL: Unless you want to 14 be deposed about how you're going to prove 15 the opposite? 16 MR. SWEET: Well, you'll have plenty 17 of witnesses. You get to ask all the 18 witnesses what happened. 19 But this is your claim. 20 MR. TIRSCHWELL: But you don't get to 21 ask trial counsel how he's going to prove his 22 case in the deposition. 23 MR. SWEET: But this is the kind of 24 fact that you think should be held until 25 trial?</p>	<p>1 MR. SWEET: And the fact, how they 2 got out, he's not going to testify to the 3 facts? 4 MR. TIRSCHWELL: Let me ask you 5 this, Joel: Do you think if we have a trial 6 you'll be able to call Barry to the stand and 7 question him about how the coins got out of 8 the Mint? 9 I don't think so. 10 That's why it's not appropriate here; 11 okay? 12 You put in the evidence at a trial. 13 You don't interrogate the lawyers about what 14 the evidence is. That's how it works. 15 Okay? 16 You know that. 17 MR. SWEET: But he's not - - 18 MR. TIRSCHWELL: This is ridiculous. 19 MR. SWEET: He's not just a lawyer; 20 he's a witness. 21 MR. TIRSCHWELL: He's not a witness. 22 He wasn't around in 1933 when the coins got 23 out of the Mint. 24 MR. SWEET: Is that your view, you 25 only need somebody from 1933?</p>
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<p>1 MR. TIRSCHWELL: No. 2 But I don't think asking Mr. Berke 3 this question is the appropriate way to get 4 it. 5 I've observed a lot of 6 interrogatories. If you asked us a question 7 about what the evidence is, we've responded 8 as we thought appropriate. 9 MR. SWEET: Okay. 10 I should ask, would Mr. Langbord be 11 in a position to answer that question? 12 MR. TIRSCHWELL: We'll deal with Mr. 13 Langbord when he's being deposed. 14 MR. SWEET: So, there's no way that 15 he can answer the question? 16 MR. TIRSCHWELL: I didn't say that. 17 MR. SWEET: Barry is itching to tell 18 you something. I think he's wishing the 19 answer. 20 (Off-the-record discussion between 21 the witness and Mr. Tirschwell.) 22 MR. TIRSCHWELL: And that's the 23 ultimate legal issue that will be litigated 24 in the case. That's the issue that will be 25 litigated in the case.</p>	<p>1 MR. TIRSCHWELL: Not Mr. Berke. He's 2 not the witness as to how the coins got out 3 of the Mint. 4 MR. SWEET: Okay. 5 MR. TIRSCHWELL: He's a lawyer, in 6 representing clients, learned information 7 about that. It's not appropriate inquiry in 8 a deposition. 9 MR. SWEET: Okay. 10 BY MR. SWEET: (Continued) 11 Q. Mr. Berke, just so we set the stage, 12 my clients, both lawyers, were asked last week 13 whether they were aware of any situation where the 14 United States took somebody's coin without 15 initiating a forfeiture proceeding. 16 Okay? 17 So my question is a follow-up of the 18 same question: 19 Were you aware, during the period of 20 time that you had discussions with the Mint, in 21 2004 and 2005, that the 1933 Double Eagle in the 22 possession of F.C.C. Boyd was turned over to the 23 United States without litigation? 24 MR. TIRSCHWELL: Are you referring to 25 the Barnard case?</p>

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<p>1 I don't know who F.C.C. Boyce is. 2 MR. SWEET: No, Boyd. 3 Q. Were you aware of that during the 4 time you had discussions with the Mint? 5 A. Consistent with my counsel's 6 instructions, I need to speak to him. 7 MR. SWEET: Okay. 8 (Recess: 5:50 p.m.) 9 (Resumed: 5:56 p.m.) 10 MR. TIRSCHWELL: Okay; on the record? 11 MR. SWEET: Yes. 12 There was a pending question. 13 MR. TIRSCHWELL: Yes, I think Mr. 14 Berke has an answer, with the understanding 15 we're not waiving work product. 16 But go ahead and give the answer. 17 THE WITNESS: Is that the 18 understanding, it's not a waiver of work 19 product. 20 BY MR. SWEET: (Continued) 21 Q. It's not? 22 A. Not a waiver of work product? 23 Q. It's not a waiver of work product. 24 A. I recall reviewing certain documents 25 that purported to represent what certain</p>	<p>1 I knew some of those instances did 2 not result in litigation. 3 Q. Okay. 4 A. I didn't get into the details. 5 But what I would say is, obviously, I 6 was aware in more recent times the government filed 7 a forfeiture claim against the Fenton 1933 Double 8 Eagle, as to that forfeited action, and I was not 9 familiar with any instance in modern times 10 involving the present forfeiture statutes, 11 including CAFRA, where the government did not 12 institute a forfeiture claim against a coin or 13 property to seize it. 14 Q. Okay. Did you know that C.M. 15 Williams also surrendered a 1933 Double Eagle 16 without litigation? 17 A. The answer would be, I can't say that 18 I knew that. 19 But my answer would be the same as it 20 was for the other people. 21 Q. Okay. I'm going to ask you about 22 other people. 23 Louis Eliasberg (phonetic), do you 24 know about him? 25 A. I would not have known the specifics</p>
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<p>1 individuals did with their '33 Double Eagles in the 2 '40s. 3 As I sit here today, I can't recall 4 specifically - - I do remember F.C.C. Boyd being 5 one of the individuals. 6 But as I sit here today, I can't 7 recall the chronology of what happened with his 8 coin. 9 Again, I believe this was in the 10 early to mid 1940s. 11 Q. Okay. Well, I'm trying to understand 12 your answer. 13 During the period you were having 14 discussions with the Mint, from the time you first 15 called to say that you were - - you had identified 16 a client with Double Eagles, all the way through 17 the time that you filed your lawsuit, you were 18 aware that a number of the prior 1933 Double Eagles 19 that were recovered by the United States did not 20 result in litigation? 21 A. What I can say is, I recall, prior to 22 the conversations, having seen documentation that 23 purported to represent what happened to certain 24 individuals in the '40s, as to their coins. 25 Okay?</p>	<p>1 regarding the Louis Eliasberg coin. 2 Q. But you knew several people had 3 surrendered '33 Double Eagles without litigation 4 following - - 5 A. I want to be clear, this was in - - I 6 believe that this was all in the 1940s, under a 7 whole set of other circumstances that I'm not 8 talking about. 9 And what I knew was not what 10 happened; I knew that I had read certain documents 11 that purported to represent a course of events 12 involving certain coins. 13 I didn't actually know what happened. 14 Q. Okay. In the Plaintiffs' Request - - 15 Plaintiffs' Responses And Objections To Defendants' 16 First Set Of Requests For Admission, at 90, 92 and 17 93. 18 (Handed to the witness.) 19 (Witness reviews the exhibit.) 20 A. You're saying 90? 21 MR. SWEET: Hold on one second. 22 (Pause.) 23 MR. SWEET: Well, let me ask you 24 this: 25 BY MR. SWEET: (Continued)</p>

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<p>1 Q. Do you have any factual information</p> <p>2 that -- I'll put this aside for a minute -- any</p> <p>3 factual information that the findings of fact in</p> <p>4 the Barnard case are erroneous?</p> <p>5 MR. TIRSCHWELL: Objection.</p> <p>6 I'm instructing him not to answer.</p> <p>7 It's work product.</p> <p>8 MR. SWEET: Okay.</p> <p>9 Off the record for a minute.</p> <p>10 (Off-the-record discussion between</p> <p>11 counsel.)</p> <p>12 MR. SWEET: Back on the record.</p> <p>13 So, you're not going to allow Mr.</p> <p>14 Berke to testify about anything about the</p> <p>15 Barnard decision; is that what you're --</p> <p>16 MR. TIRSCHWELL: I'm not going to</p> <p>17 allow him to testify as to his legal</p> <p>18 analysis, our legal analysis, our thoughts,</p> <p>19 our impressions about the Barnard case or why</p> <p>20 we think that the Barnard case is erroneously</p> <p>21 decided or not a proper basis for the</p> <p>22 government to rely on, even the court to rely</p> <p>23 on in this case.</p> <p>24 All of that is work product.</p> <p>25 MR. SWEET: Okay. We've tried to</p>	<p>1 MR. SWEET: That's not what I'm</p> <p>2 asking.</p> <p>3 MR. TIRSCHWELL: You're asking --</p> <p>4 MR. SWEET: If Mr. Berke can answer</p> <p>5 the question and your response is that he</p> <p>6 won't?</p> <p>7 MR. TIRSCHWELL: That's correct.</p> <p>8 BY MR. SWEET: (Continued)</p> <p>9 Q. Mr. Berke, have you had any</p> <p>10 discussions with David Tripp since January 1st,</p> <p>11 2004?</p> <p>12 A. Yes.</p> <p>13 Q. Could you describe those</p> <p>14 communications?</p> <p>15 A. I'm a little unclear about the cutoff</p> <p>16 of January 4th. So.</p> <p>17 Q. January 1st, 2004?</p> <p>18 A. January 1st, 2004, I'm a little</p> <p>19 unclear what conversations may have, you know --</p> <p>20 when certain conversations were.</p> <p>21 But to the best of my ability, using</p> <p>22 that date as a guide, a rough guide, I believe I</p> <p>23 had discussions with Mr. Tripp regarding a book</p> <p>24 that he was writing.</p> <p>25 I don't recall exactly when that book</p>
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<p>1 probe that in requests for admissions and you</p> <p>2 objected and won't answer there.</p> <p>3 On the record: Is there a place</p> <p>4 where we can at least try to understand what</p> <p>5 your arguments are?</p> <p>6 MR. TIRSCHWELL: I'm not going to</p> <p>7 discuss that on the record. It's just not</p> <p>8 the time.</p> <p>9 MR. SWEET: It's going to remain a</p> <p>10 mystery?</p> <p>11 MR. TIRSCHWELL: I'm not saying it's</p> <p>12 going to remain a mystery.</p> <p>13 If you have a question about our</p> <p>14 response, you want to meet and confer, you</p> <p>15 know, we'll talk to you about it.</p> <p>16 MR. SWEET: Okay. We've done all of</p> <p>17 this.</p> <p>18 MR. TIRSCHWELL: If you want to write</p> <p>19 us a letter where you think our response is</p> <p>20 inappropriate, insufficient, we'll consider</p> <p>21 it.</p> <p>22 But a deposition of Mr. Berke, in his</p> <p>23 dealings with the government, it's not the</p> <p>24 time and places to deal with the adequacies</p> <p>25 of our response to our admissions.</p>	<p>1 was completed and came out. My best memory is that</p> <p>2 it came out sometime in 2004.</p> <p>3 I had discussions with him, writing</p> <p>4 questions about that he would ask about the coin or</p> <p>5 about the litigation involving the Fenton coin,</p> <p>6 more specifically.</p> <p>7 Q. He asked you questions or you asked</p> <p>8 him questions?</p> <p>9 A. He asked me questions for his book.</p> <p>10 Q. Okay.</p> <p>11 A. I recall that he was -- he was --</p> <p>12 he gave a lecture somewhere, after he came --</p> <p>13 after put the book out and he invited me to attend.</p> <p>14 It may have been more than one lecture. But I</p> <p>15 remember attending one, a lecture he gave about the</p> <p>16 book. And I remember having discussions with him</p> <p>17 at that lecture.</p> <p>18 I generally recall having a</p> <p>19 discussion with him in which he told me that his</p> <p>20 book was -- had been well received in some regard.</p> <p>21 I don't know whether he had been</p> <p>22 nominated for a prize or had been recognized in</p> <p>23 some way.</p> <p>24 And I don't recall that was part of</p> <p>25 another discussion involving his book or him</p>

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<p>1 extending an invitation to me to the lecture, but I 2 recall having a conversation with him in which he 3 shared with me that it had received or been 4 nominated for something. 5 I then recall a call I placed to Mr. 6 Tripp - - this is my general recollection. There 7 may have been other additional discussions we had. 8 That's my best memory. 9 Until I recall after the meeting you 10 had asked about, in June of '05, with the 11 government, when the government had indicated they 12 were going to be issuing a press release about the 13 coins, I recall, as a courtesy, calling Mr. Tripp 14 to tell him about it, I think the night before, 15 roughly right before, on the theory that he would 16 have interest in it. 17 Q. Okay. 18 A. I may have had a subsequent 19 conversation with Mr. Tripp after that. I just 20 don't recall. 21 Q. Okay. 22 A. I should say there are other 23 interactions I've had with him. 24 For example, David Tripp's father had 25 created Tubby the Tuba, I believe is the name, a</p>	<p>1 THE WITNESS: What I can say is, 2 outside of this litigation, I did not agree 3 with all of the conclusions or inferences 4 that he drew in his book. 5 BY MR. SWEET: (Continued) 6 Q. But do you feel - - have you found 7 him to be credible? 8 A. I can't answer that question. 9 Q. You just don't have a basis to answer 10 it or you don't want to? 11 A. I can't separate his role as an 12 expert in this case and my views about certain 13 statements in his report in this case, to answer 14 the question without revealing legal process, legal 15 thought and work product. 16 Q. When did you first learn that he 17 would be an expert for the United States in this 18 case? 19 A. I believe when I saw the report. 20 Q. Did you ever talk to David Tripp 21 about whether he would agree to be retained for the 22 Langbords? 23 MR. TIRSCHWELL: I mean, I think - - 24 I don't know the answer. But I think if 25 there were conversations with a potential</p>
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<p>1 famous cartoon character that he was trying to 2 reintroduce, and I believe he sent to my youngest 3 children a copy of that and either called me before 4 or after. 5 I mean, there were a variety of 6 discussions I've had with David Tripp over the 7 years. 8 I'm giving you my best memory, but 9 I'm sure I'm leaving some occasions out. 10 Q. How would you describe your 11 relationship with him? 12 A. We had a good professional 13 relationship. 14 He - - I - - I met David Tripp in 15 connection with the Sotheby's catalogue. 16 He - - in writing his book, he asked 17 questions in writing the book. 18 Also, we had a professional 19 relationship. 20 Q. You know him to be credible? 21 A. I'm not comfortable characterizing 22 him. I don't - - I will say this. 23 Well, let me ask my counsel. 24 (Off-the-record discussion between 25 the witness and Mr. Tirschwell.)</p>	<p>1 expert, who is - - any communications, 2 whether the communication between the lawyer 3 and the expert would be privileged and that 4 would be protected. 5 So, I think it would reveal a 6 strategy. 7 MR. SWEET: I'm not asking about 8 strategy. 9 BY MR. SWEET: (Continued) 10 Q. But isn't it true you asked Mr. Tripp 11 if he would be willing to be an expert for you? 12 MR. TIRSCHWELL: You can answer that 13 yes or no. 14 Presumably, you've asked Mr. Tripp, 15 as well. 16 Let us confer for one minute. There 17 may be things I don't know. 18 (Recess: 6:11 p.m.) 19 (Resumed: 6:16.) 20 MR. TIRSCHWELL: Shall we go back on 21 the record? 22 MR. SWEET: Yes. 23 MR. TIRSCHWELL: Okay. 24 MR. SWEET: By the way? 25 MR. TIRSCHWELL: Yes?</p>

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<p>1 MR. SWEET: Courtesy purposes, just</p> <p>2 so you know, you objected to me conferring</p> <p>3 with my witnesses between the question and</p> <p>4 answer and I am being very liberal.</p> <p>5 MR. TIRSCHWELL: Not on privileged</p> <p>6 grounds, I don't think.</p> <p>7 MR. SWEET: Excuse me?</p> <p>8 MR. TIRSCHWELL: I don't think the</p> <p>9 issue was privilege.</p> <p>10 MR. SWEET: Yes, it was.</p> <p>11 But I'm being - - that's why I had to</p> <p>12 assert the privilege several times.</p> <p>13 I just want you to recognize, at</p> <p>14 least, we've gone now for a very long</p> <p>15 deposition and I've never made that objection</p> <p>16 because I thought - -</p> <p>17 MR. TIRSCHWELL: You've been very</p> <p>18 courteous in letting us confer. I agree with</p> <p>19 that.</p> <p>20 MR. SWEET: I want you to be able to</p> <p>21 confer so you can preserve your issues.</p> <p>22 (Off-the-record discussion between</p> <p>23 the witness and the Mr. Tirschwell.)</p> <p>24 MR. SWEET: Do you want now to answer</p> <p>25 the question?</p>	<p>1 recall, either way.</p> <p>2 I recall - - I do recall reading it</p> <p>3 with an eye towards anything would be embarrassing</p> <p>4 or cause reputational harm to my clients, Stephen</p> <p>5 Fenton. And I just don't recall whether or not I</p> <p>6 had comments.</p> <p>7 Q. Do you recall providing Mr. Tripp and</p> <p>8 his wife with access to your firm's documents;</p> <p>9 correct?</p> <p>10 A. I provided Mr. Tripp and his wife</p> <p>11 access to some of our firm's documents.</p> <p>12 Q. Is that in connection with his</p> <p>13 research for the book?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. Oh, let me go back.</p> <p>17 I had given him access to some of our</p> <p>18 documents in relation to his work in relationship</p> <p>19 to the catalogue that he was doing for Sotheby's.</p> <p>20 In my mind, I have a hard time</p> <p>21 distinguishing between what he had access in</p> <p>22 connection with that and what additional documents</p> <p>23 he had in connection with the book.</p> <p>24 Q. So, you gave him access for both</p> <p>25 purposes?</p>
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<p>1 MR. TIRSCHWELL: Well,</p> <p>2 notwithstanding your courtesy, our position</p> <p>3 is that who Mr. Berke may have consulted with</p> <p>4 or discussed the possibility of being a</p> <p>5 witness in the case, an expert witness in the</p> <p>6 case, is protected legal strategy.</p> <p>7 I don't think, but for the odd</p> <p>8 circumstance of him being here for a</p> <p>9 deposition, you would be entitled to ask the</p> <p>10 other side who they consulted with as a</p> <p>11 possible expert. So, I don't think you're</p> <p>12 entitled to that information.</p> <p>13 So, on those grounds, I'm instructing</p> <p>14 him not to answer.</p> <p>15 BY MR. SWEET: (Continued)</p> <p>16 Q. Okay. Did you review a draft of Mr.</p> <p>17 Tripp's book before its publication?</p> <p>18 A. I believe he sent me - - this is my</p> <p>19 memory - - that he sent me some chapters and I</p> <p>20 believe they were chapters related to the</p> <p>21 litigation. But I don't remember him sending me</p> <p>22 the whole book.</p> <p>23 Q. Do you remember giving comments back</p> <p>24 to him?</p> <p>25 A. I don't recall, either way. I don't</p>	<p>1 A. There was - - in connection with the</p> <p>2 Sotheby's catalogue, I recall there was a pile we</p> <p>3 gave him of documents. We sent him over documents.</p> <p>4 I recall there was also a time, in</p> <p>5 connection following the auction when he finished</p> <p>6 his book, that he, in connection with his book,</p> <p>7 that he saw other documents. And I have a hard</p> <p>8 time distinguishing what additional documents - -</p> <p>9 what additional documents he may have seen in</p> <p>10 connection with the book.</p> <p>11 Q. I'm asking you about specific</p> <p>12 documents.</p> <p>13 A. I just wanted to be precise.</p> <p>14 Q. You gave him access at least twice,</p> <p>15 once for the catalogue and once for the book?</p> <p>16 A. When you say "access," we gave him</p> <p>17 certain documents, as I think I mentioned earlier,</p> <p>18 in connection with the catalogue, after consulting</p> <p>19 with the government about appropriate - - okay - -</p> <p>20 documents that he would need to see or wanted to</p> <p>21 see.</p> <p>22 There were additional documents that</p> <p>23 he also - - that we also gave him access to in</p> <p>24 connection with his book.</p> <p>25 That's all.</p>

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Q. Okay. Well, let's see if you agree with the characterization.

He told us that he had unlimited time in a large conference room filled with documents and was able to copy anything he wanted.

Is that how you would characterize it?

A. Well, the one -- I guess the distinction I would say -- I would say is there were certain documents we were prepared to allow him access to, including documents, many documents, that we had given him in connection with his work for Sotheby's and I recall putting him a conference room and he told us which of those documents he would like copies of and we worked with him to -- to assist. But we did not give, put in that room all of our documents related to the Fenton case.

Q. You held some documents back?

A. We had some documents available and others, others that were -- were not available to him.

Q. Would you tell us the nature of the documents that he did not have access to?

A. As I sit here today, I can't.

I know at least some documents that

him, himself, and this was in connection with legislation that they were discussing, in which I came -- I learned that the Mint had this discussion with him and there may be provisions -- and that there was a potential that there would be a discussion related to the '33 Double Eagles.

I recall very brief discussion, which I did nothing other than to describe the current status of the case, which, at the time, was -- it was a legal dispute about the coins.

I don't recall any details beyond that.

Q. Is that one conversation with Representative Lucas?

A. I recall one conversation and I -- I might be able to say something else -- I just wanted to make sure it's consistent with my counsel's directive on work product.

With your permission?

MR. SWEET: All right.

(Off-the-record discussion between the witness and Mr. Tirschwell.)

THE WITNESS: I'm also aware, as I may have mentioned already, that either Senator Laxalt, who I think more likely

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were unique to the Fenton case that didn't seem to be relevant and then what other documents were included or not, as I sit here today, I just can't do that.

Q. You just don't know?

A. As I sit here today, I can't do that.

Q. You had conversations with Judith Silver in connection with the Langbord litigation?

A. I --

MR. TIRSCHWELL: Objection.

Now we're getting into what witnesses he talked to, what factual investigation he may have conducted.

We're not going to allow him to answer that. That's correct, all work product.

BY MR. SWEET: (Continued)

Q. Your conversations with -- or your communications with Representative Lucas, could you describe those, please?

A. What I recall is that he was having hearings about a bill and I spoke to him and, again, it was -- my memory is a little -- is not entirely clear as to whether I -- I spoke to him or him and a staffer. I'm pretty sure I spoke to

Michelle Laxalt, had a conversation with the Mint's -- or someone who worked with them had a conversation with either Senator Lucas or his staff or both, also in connection with the same proposal and legislation.

BY MR. SWEET: (Continued)

Q. Representative Lucas?

A. I'm sorry.

Representative Lucas.

Thank you.

Q. So, that was the extent of the communications with Representative Lucas, what you've just described to me?

A. That I'm aware of, yes.

Q. Do you recall anything about your communications with Senator Lieberman or Senator Spector?

A. I never spoke with either senator.

I remember a very brief discussion with a staffer for one of them, who, as I understand, one of the senators may have some interest in the facts. I believe she suggested we could put in a letter and, I should say, I don't recall whether it was a conversation I had or a colleague of my firm had and that we would put in a

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<p>1 letter, if we'd like to put a letter, for the</p> <p>2 senator to review.</p> <p>3 And we did not submit any letter.</p> <p>4 I don't recall a discussion beyond</p> <p>5 that.</p> <p>6 Q. Let's turn to the request for</p> <p>7 admissions.</p> <p>8 Turn, please, to page 53.</p> <p>9 A. (Witness complies.)</p> <p>10 MR. TIRSCHWELL: Fifty-three?</p> <p>11 MR. SWEET: Page 93, question.</p> <p>12 BY MR. SWEET: (Continued)</p> <p>13 Q. Question, request number 95.</p> <p>14 (Witness reviews the exhibit.)</p> <p>15 Q. The request asks you, the Plaintiffs,</p> <p>16 to admit "on August 25th, '04, Mr. Berke acknow-</p> <p>17 ledged to representatives of the United States Mint</p> <p>18 that the only course of action was for Plaintiffs</p> <p>19 to transfer possession of the '33 Double Eagles to</p> <p>20 the United States."</p> <p>21 And the response says that - -</p> <p>22 MR. TIRSCHWELL: You don't have to</p> <p>23 read it.</p> <p>24 MR. SWEET: There's an objection?</p> <p>25 Q. It says that the issue can be</p>	<p>1 MR. SWEET: Let me finish my</p> <p>2 question.</p> <p>3 BY MR. SWEET: (Continued)</p> <p>4 Q. Is that a request that you're willing</p> <p>5 to either admit or deny?</p> <p>6 MR. TIRSCHWELL: Objection.</p> <p>7 You're mischaracterizing what it</p> <p>8 says.</p> <p>9 It says, "Plaintiffs further object</p> <p>10 on the grounds that this request is improper,</p> <p>11 under Rule 36, as it is an attempt to find</p> <p>12 out what Plaintiffs knew, which Defendants</p> <p>13 have already explored and indicated they plan</p> <p>14 to explore further at Plaintiffs'</p> <p>15 depositions."</p> <p>16 MR. SWEET: Oh.</p> <p>17 MR. TIRSCHWELL: It does also</p> <p>18 indicate that, to the extent this request</p> <p>19 seeks information protected by</p> <p>20 attorney-client privilege or work product</p> <p>21 doctrine, it's objectionable.</p> <p>22 MR. SWEET: You don't have to repeat</p> <p>23 all that.</p> <p>24 MR. TIRSCHWELL: You're</p> <p>25 mischaracterizing it.</p>
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<p>1 explored at the noticed deposition of Barry Berke.</p> <p>2 A. Yes.</p> <p>3 Q. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Can you admit or deny number 95?</p> <p>6 MR. TIRSCHWELL: I believe it's asked</p> <p>7 and answered.</p> <p>8 THE WITNESS: I believe I already</p> <p>9 have denied it.</p> <p>10 If it's unclear, I deny that.</p> <p>11 BY MR. SWEET: (Continued)</p> <p>12 Q. So, you're denying that?</p> <p>13 A. Yes.</p> <p>14 Q. Turning to 98.</p> <p>15 A. (Witness complies.)</p> <p>16 Q. On page 95.</p> <p>17 A. Huh-huh.</p> <p>18 Q. The request states, "admit that</p> <p>19 Plaintiffs knew on September 22nd, 2004, that the</p> <p>20 United States maintained that none of 1933 Double</p> <p>21 Eagles had been lawfully issued as coinage."</p> <p>22 Again, the response says, "to be</p> <p>23 explored at depositions."</p> <p>24 MR. TIRSCHWELL: Well, what does it</p> <p>25 say?</p>	<p>1 MR. SWEET: When it says, "explore</p> <p>2 further at Plaintiffs' depositions," I was</p> <p>3 thinking of this one as being included in</p> <p>4 that.</p> <p>5 That would have to be Mr. Langbord's</p> <p>6 deposition?</p> <p>7 MR. TIRSCHWELL: Yes.</p> <p>8 I believe you asked this question of</p> <p>9 Joan Langbord. I expect you'll ask Roy</p> <p>10 Langbord, to the extent he can answer without</p> <p>11 revealing communications with counsel.</p> <p>12 MR. SWEET: Okay.</p> <p>13 MR. TIRSCHWELL: And he will.</p> <p>14 MR. SWEET: Mr. Berke you're</p> <p>15 instructed not to answer that one?</p> <p>16 MR. TIRSCHWELL: You're asking Mr.</p> <p>17 Berke what his clients knew.</p> <p>18 Yes, I'm instructing him not to</p> <p>19 answer that. It's only learned from</p> <p>20 communications with his clients.</p> <p>21 MR. SWEET: Imputed - - his clients</p> <p>22 can only impute knowledge through him to the</p> <p>23 extent that he's the one who knows everything</p> <p>24 and they claim to know nothing. So, I'm just</p> <p>25 asking.</p>

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<p>1 If you're going to instruct him not 2 to answer - - 3 MR. TIRSCHWELL: What's the question? 4 MR. SWEET: I don't want to argue. 5 If he admits or denies 98? 6 MR. TIRSCHWELL: I'm instructing him 7 not to answer a question about what the 8 Plaintiffs knew. 9 MR. SWEET: Okay. 10 BY MR. SWEET: (Continued) 11 Q. Let's look at 99. 12 A. (Witness complies.) 13 Q. It says, "admit that Daniel P. 14 Shaver, Chief Counsel, United States Mint, informed 15 Mr. Berke before the transfer of possession of the 16 1933 Double Eagles from the Plaintiffs to the 17 United States that the United States did not agree 18 to any conditions or qualifications to the transfer 19 of possession." 20 And if you see the answer - - the 21 response, I should say, refers to this being a 22 disputed issue that the Defendants have indicated 23 they plan to explore at the noticed deposition of 24 Barry Berke. 25 So, I'm going to ask Mr. Berke now</p>	<p>1 A. I thought I had qualified, it's not 2 that I didn't recall one way or the other, but he 3 did not say that. 4 Q. You recall that he did not say that? 5 A. Exactly. 6 Q. Let's look at 100. 7 MR. SWEET: I'm not going to read it. 8 Q. Why don't you just read the request 9 and tell me if you notice it's to be explored at 10 the deposition of Barry Berke? 11 Why don't you tell me if you can 12 admit or deny 100? 13 (Witness reviews the exhibit.) 14 MR. TIRSCHWELL: Well, to the extent 15 you can answer that without - - the objection 16 - - there's an objection to the form, which 17 is stated in our response. 18 But I think Mr. Berke has testified 19 at length about his understanding of the 20 terms and circumstances surrounding the 21 transferred possession of the coins. 22 MR. SWEET: I don't think he answered 23 this question. 24 What I'm asking is, whether he can 25 admit or deny this fact?</p>
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<p>1 to admit or deny 99. 2 MR. TIRSCHWELL: For the record, 3 you've asked this question and he's answered 4 it. 5 BY MR. SWEET: (Continued) 6 Q. What's the answer? 7 A. I believe I have answered; it's 8 denied. 9 Q. Okay. In fact, I think you said you 10 did not recall him saying that? 11 A. I don't believe I said that. 12 Q. Now you're testifying maybe - - you 13 did before. 14 A. I recall very specifically what I 15 said is I did not recall him saying that. 16 And you said, "You don't recall 17 whether he said it or not?" 18 I said, "No, I don't recall him 19 saying that," meaning it wasn't. 20 I'm very certain that's what the 21 record says. 22 Q. I think we might have understood 23 different things from that. 24 A. Okay. 25 Q. It's possible.</p>	<p>1 MR. TIRSCHWELL: Do you want him to 2 go through the whole explanation again of 3 what occurred and what he said and what they 4 said and what he understood? 5 MR. SWEET: No, I would just like one 6 word, admit or deny. 7 BY MR. SWEET: (Continued) 8 Q. When it says, "Do not agree to any 9 conditions," if we put the word "expressly" before 10 the word "agree," so it reads, "admit that the 11 United States did not expressly agree to any 12 conditions or qualifications - - did not expressly 13 agree to any conditions or qualifications 14 concerning Plaintiffs' transfer of possession of 15 the 1933 Double Eagles to the United States." 16 (Witness reviews the exhibit.) 17 MR. TIRSCHWELL: I still object to 18 the form of the question. 19 The witness can answer to the extent 20 that he can answer, admits or deny, or - - 21 but if he can't, if it's more complicated 22 than that, which is what we indicated here, 23 then it's not. 24 THE WITNESS: I believe I've already 25 testified at length to this question.</p>

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<p>1 And again, as it is presently posed, 2 I don't think I can improve upon that answer 3 that I've already given at length. 4 I don't think I can answer the 5 question as it's presently posed. 6 BY MR. SWEET: (Continued) 7 Q. Okay. You don't think you can? 8 A. Well, I think I've answered the 9 question. 10 Q. I don't think you've answered this 11 question. 12 And if you've answered it already, it 13 shouldn't be a problem to answer it again. 14 I think it's a different question. I 15 think it's very succinct. 16 (Witness reviews the exhibit.) 17 Q. There was no expressed agreement to a 18 condition or qualification, was there? 19 MR. TIRSCHWELL: I object to the 20 form. 21 You keep using "expressed." You 22 mean, did they say the words, "we agree"? 23 I don't know what you mean by that. 24 (Witness reviews the exhibit.) 25 THE WITNESS: What I can say is what</p>	<p>1 Could you give me an answer? 2 A. I don't believe it accurately does. 3 Q. Can you give me an answer to 100? 4 MR. TIRSCHWELL: He just answered it. 5 Asked and answered. 6 MR. SWEET: Do you think that was an 7 answer? 8 MR. TIRSCHWELL: Yes. 9 BY MR. SWEET: (Continued) 10 Q. Did the government - - when you say 11 there was an understanding between the Plaintiffs 12 and the government, in what way did the government 13 express its agreement with the terms you've just 14 described? 15 MR. TIRSCHWELL: You can describe 16 what happened. 17 A. I walked through our entire course of 18 dealings and discussions were based on the 19 understanding that the government would have the 20 opportunity to take these coins and test them for 21 authenticity to determine whether or not we can 22 reach an agreement without my client relinquishing 23 any of the rights or remedies that they had prior 24 to that and would be the subject of any litigation 25 in the event that we didn't reach an agreement.</p>
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<p>1 I've said before, is there was an 2 understanding that my clients were making the 3 coins available, the basis that we discussed, 4 and that they were not waiving any rights or 5 remedies that they possessed at the time as 6 to the coins. 7 That's a simplification of my longer 8 answer, which is, obviously, part of this 9 record. 10 BY MR. SWEET: (Continued) 11 Q. When you say there was an 12 "understand," there was an understanding by whom? 13 A. There was an understanding by both 14 parties to the transfer. 15 It's memorialized in my September 16 21st letter, to which the government never disputed 17 orally or in writing or said that they in any way 18 disagreed with the - - with any statement in that 19 letter or the full reservations of rights that were 20 part of that letter, for which the - - 21 Q. Okay. So your position is that their 22 lack of a response was an expressed agreement to a 23 condition or qualification? 24 A. That wasn't my testimony. 25 Q. That sums up your testimony.</p>	<p>1 Q. Okay. And I'm asking you if there 2 was an affirmative acknowledgement by someone from 3 the government to the understanding which you 4 contend existed? 5 A. Those were the only terms that we 6 said we would be prepared to take the action that 7 we did. 8 The government said they were 9 interested in having those discussions on those 10 terms. There was a full discussion that this would 11 be pursuant to a reservation of rights. Those 12 rights that were stated repeatedly. That were 13 stated in writing. 14 And the government - - 15 Q. By you? 16 A. In addition, in addition to expressly 17 accepting and agreeing to those terms, also never 18 in any way, in writing or orally, disputed what, 19 in fact, were the terms of the transfer. 20 Q. And they never, in writing or orally, 21 acknowledged your contention of a purported 22 agreement? 23 A. I disagree with that. 24 The entire basis of our discussions, 25 the entire purpose of what we were doing was</p>

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<p>1 pursuant to this understanding that as to how we</p> <p>2 were proceeding. So, I disagree with you. Those</p> <p>3 were the entire basis of our discussions related to</p> <p>4 what happened.</p> <p>5 And it was discussed expressly.</p> <p>6 Q. Number 103.</p> <p>7 Would you give me an admission or</p> <p>8 denial to 103, please?</p> <p>9 (Witness reviews the exhibit.)</p> <p>10 MR. TIRSCHWELL: Objection; asked and</p> <p>11 answered.</p> <p>12 It's essentially the same as to 100.</p> <p>13 He's given an answer all afternoon to</p> <p>14 that question.</p> <p>15 THE WITNESS: My answer to 103 would</p> <p>16 be the same answer I just gave to 100.</p> <p>17 BY MR. SWEET: (Continued)</p> <p>18 Q. Is it an admission or denial?</p> <p>19 MR. SWEET: But here's the thing.</p> <p>20 I'm trying to narrow some of this down. So,</p> <p>21 if you file a motion to have these deemed</p> <p>22 admitted for invalid objections, we can try</p> <p>23 to narrow the number of requests that we're</p> <p>24 dealing with.</p> <p>25 And I would like to take these off</p>	<p>1 it's denied.</p> <p>2 Quite frankly, I'm not sure exactly</p> <p>3 what this means.</p> <p>4 MR. SWEET: Read it and the witness</p> <p>5 can read it and tell us. If it's consistent,</p> <p>6 then it's denied, it's denied.</p> <p>7 (Pause.)</p> <p>8 MR. TIRSCHWELL: I mean, you can try</p> <p>9 to answer.</p> <p>10 THE WITNESS: I don't understand how</p> <p>11 you phrase it here.</p> <p>12 I think I've given you my explanation</p> <p>13 and my recollection of everything that</p> <p>14 happened and what did happen on these issues.</p> <p>15 And I think it's, obviously,</p> <p>16 answering interrogatories is obviously not an</p> <p>17 attempt to see if a, you know, statement that</p> <p>18 we don't think is clearly worded is admitted</p> <p>19 or denied or refers to the deposition.</p> <p>20 I believe, I've answered these</p> <p>21 questions to the best of my ability, based on</p> <p>22 what happened.</p> <p>23 And I find -- I find our objections</p> <p>24 to your question here to be a valid</p> <p>25 objection.</p>
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<p>1 the table. If it's asked and answered, then</p> <p>2 it shouldn't be difficult.</p> <p>3 I don't believe these are. I believe</p> <p>4 these are carefully worded requests.</p> <p>5 MR. TIRSCHWELL: I think it's pretty</p> <p>6 clear from a legal point of view, in terms of</p> <p>7 moving forward, I think it's pretty clear</p> <p>8 that Mr. Berke doesn't agree and, therefore,</p> <p>9 we don't admit this characterization of what</p> <p>10 occurred.</p> <p>11 MR. SWEET: So it's denied, 103?</p> <p>12 MR. TIRSCHWELL: I think it's very</p> <p>13 clear.</p> <p>14 MR. SWEET: 103 is denied?</p> <p>15 (Pause.)</p> <p>16 MR. TIRSCHWELL: Well, I think, you</p> <p>17 know, it's -- the problem, as we sit here,</p> <p>18 it's vague, it's over simplified.</p> <p>19 I think Mr. Berke has made it clear</p> <p>20 that there was an understanding and what that</p> <p>21 understanding was prior to the transfer of</p> <p>22 the coins.</p> <p>23 So, to the extent that this request</p> <p>24 for admission is inconsistent with that</p> <p>25 testimony, as to that understanding, then</p>	<p>1 BY MR. SWEET: (Continued)</p> <p>2 Q. Okay. Mr. Berke, first of all, they</p> <p>3 are not interrogatories. There is a big</p> <p>4 difference.</p> <p>5 A. Excuse me.</p> <p>6 A request for admission.</p> <p>7 Q. The request for admissions are</p> <p>8 intended to let the parties clarify disputed facts.</p> <p>9 MR. TIRSCHWELL: Just to cut through</p> <p>10 it, this is a disputed fact. I don't know</p> <p>11 how that could be any more clear.</p> <p>12 MR. SWEET: Just simply deny it.</p> <p>13 MR. TIRSCHWELL: I'm not here to</p> <p>14 answer your request for admission. We have a</p> <p>15 deposition.</p> <p>16 You want to ask him a question, ask</p> <p>17 him a question.</p> <p>18 MR. SWEET: But the answer is that we</p> <p>19 should talk to Mr. Berke at his deposition.</p> <p>20 MR. TIRSCHWELL: And you did and he</p> <p>21 --</p> <p>22 MR. SWEET: Now --</p> <p>23 MR. TIRSCHWELL: It says --</p> <p>24 MR. SWEET: No, we're asking a</p> <p>25 specific question.</p>

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1 MR. TIRSCHWELL: You're asking for --
 2 MR. SWEET: You're not giving us a
 3 yes or no.
 4 MR. TIRSCHWELL: Because it is more
 5 complicated than that and he's given you the
 6 more complicated answer and I think the
 7 record is very clear on that.
 8 MR. SWEET: But the request for
 9 admissions requires simplicity. If it's
 10 denied -- if you want to deny it because
 11 it's simply not accurate, you can admit it or
 12 deny it.
 13 (Off-the-record discussion between
 14 the witness and Mr. Tirschwell.)
 15 MR. TIRSCHWELL: I mean, this isn't
 16 the time and place to explore what you think
 17 of our responses to your requests for
 18 admissions. It is just not.
 19 MR. SWEET: Well, you know, you tell
 20 us in the answer that the information can be
 21 explored at the noticed deposition of Barry
 22 Berke.
 23 MR. TIRSCHWELL: Yes, information.
 24 MR. SWEET: Now, in the deposition of
 25 Barry Berke, you're telling us it is not the

1 purpose of the request for admissions, that
 2 it's to eliminate disputed issues.
 3 Finally, and you know, that is a
 4 disputed issue. It couldn't be more clear
 5 based on the testimony that has been given
 6 today.
 7 MR. SWEET: Let's go back to Berke 4.
 8 MR. TIRSCHWELL: Four?
 9 MR. SWEET: Four.
 10 MR. TIRSCHWELL: It's also getting
 11 pretty late. I don't know how much more you
 12 have.
 13 MR. SWEET: I have?
 14 MR. TIRSCHWELL: What do you have?
 15 MR. SWEET: About an hour.
 16 MR. TIRSCHWELL: All right.
 17 MR. SWEET: I'm hoping to end before
 18 that.
 19 But let's keep moving.
 20 MR. TIRSCHWELL: We started at eleven
 21 and it is a quarter to seven. Forty-five
 22 minutes for lunch.
 23 MS. ROMERO: We took an hour and
 24 fifty-three minutes worth of breaks. So, we
 25 have about an hour left.

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1 time or place.
 2 MR. TIRSCHWELL: No, that's, as you
 3 know, that's a mischaracterization.
 4 What we said is, you're seeking
 5 discovery of information regarding disputed
 6 issues that Defendants have indicated they
 7 plan to explore with the noticed deposition
 8 of Barry Berke.
 9 You have explored adnauseum the
 10 disputed recollections; that is, the
 11 recollections that, apparently, the witnesses
 12 on your side disagree with, but the
 13 recollections that Mr. Berke has had -- has
 14 of what happened with his interactions with
 15 the government prior to the transfer of the
 16 coins.
 17 We've allowed you to explore that as
 18 much as you wanted. You've asked open-ended
 19 questions, close-ended questions. You've
 20 asked the same questions over and over again.
 21 He's answered every, every question you've
 22 asked about what happened between him and the
 23 government and that's exactly what we said we
 24 would allow and we have allowed it.
 25 And you continue to lecture us on the

1 MR. SWEET: Let's just keep moving
 2 and hopefully we'll be done soon.
 3 MR. TIRSCHWELL: A little longer.
 4 MR. SWEET: Berke 4.
 5 MR. TIRSCHWELL: Yes, we can go to
 6 Berke 4.
 7 BY MR. SWEET: (Continued)
 8 Q. Mr. Berke, based upon the speech you
 9 just heard from your counsel, will you answer now
 10 the third line, where it says, "based on our
 11 understand," is "our understanding" referring to
 12 Plaintiffs or is that referring to a mutual
 13 understanding?
 14 A. I'm under a direction not to answer.
 15 MR. TIRSCHWELL: Let's --
 16 MR. SWEET: I think that speaks
 17 enough about your --
 18 MR. TIRSCHWELL: No.
 19 MR. SWEET: Your cooperation and
 20 willingness to have him answer questions.
 21 MR. TIRSCHWELL: You're not going to
 22 silence me or we'll be done.
 23 MR. SWEET: I would never try to
 24 silence you.
 25 MR. TIRSCHWELL: Thank you.

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<p>1 So, he's been instructed not to 2 answer about what his thoughts and intentions 3 were when he used particular words. 4 He has answered - - and I've invited 5 you to ask him, although you didn't get, but 6 you subsequently have - - I invited you to 7 ask what was the understanding. I'm not 8 blocking that. 9 And the record is clear. 10 And he's testified to what was the 11 understanding and he's testified to as to 12 whether it was just his understanding or he 13 thought the representatives of the government 14 understood that, as well. 15 You are free to ask him that and he 16 has answered that question. 17 So, the record is clear. 18 And what - - and what - - instead, 19 what you're asking him is his mental thoughts 20 and his thought process about the letter. 21 That is not proper and I'm not allowing him 22 to answer that. 23 (Off-the-record discussion between 24 the witness and Mr. Tirschwell.) 25 MR. TIRSCHWELL: I'm reminded that's</p>	<p>1 Mr. Weinman that would reflect their agreement with 2 your purported understanding referenced in Berke 4? 3 MR. TIRSCHWELL: I mean, this is 4 asked and answered. 5 He's testified as to what they said, 6 what he understood, what they didn't say. 7 MR. SWEET: I'm asking specifically 8 if he has anything that either of them have 9 said that would be an explicit 10 acknowledgement that they agreed that there 11 was - - that this would - - the purported 12 understanding reflected here. 13 That's a question about what they - - 14 MR. TIRSCHWELL: You can answer that. 15 MR. SWEET: Communicated. 16 THE WITNESS: I believe I've answered 17 this on multiple occasions. I don't mean to 18 narrow or exclude any of the prior 19 statements. 20 But it's my understanding in our 21 discussions regarding what we were prepared 22 to do, the entire purpose was to have a 23 discussion about resolving disputes; the 24 terms that we agreed is, we would make them 25 available for the government to inspect,</p>
Page 303	Page 305
<p>1 the same objection you made as to your 2 clients. 3 MR. SWEET: A privilege involved with 4 my clients? 5 MR. TIRSCHWELL: Ours is no less 6 important. 7 MR. SWEET: It's a different 8 privilege. 9 MR. TIRSCHWELL: That may be. 10 BY MR. SWEET: (Continued) 11 Q. Mr. Berke, the term "our 12 understanding," did you mean this to refer to 13 Plaintiffs and the government? 14 MR. TIRSCHWELL: This is asked and 15 answered. 16 MR. SWEET: So, you're objecting? 17 MR. TIRSCHWELL: I am. 18 We have our record on this. He's 19 made it clear as to what the understanding 20 was. He's made it clear, in his view, the 21 understanding was a shared one. He couldn't 22 be more clear than that. 23 BY MR. SWEET: (Continued) 24 Q. Do you have any - - could you 25 identify any explicit statement from Mr. Shaver or</p>	<p>1 which they had said was a precondition. 2 Having discussions about a settlement of the 3 issues, they indicated at our initial meeting 4 that they were interested. After our initial 5 meeting, in the phone call, they understood, 6 after speaking to them, they said they would 7 be interested in pursuing what we proposed. 8 Part of this was a reservation of my 9 clients' rights. 10 It was an understanding and agreement 11 that those were the terms in which we were 12 moving forward. 13 That was the agreement that's 14 reflected in our discussions, it's reflected 15 in the letter that I sent and I don't think 16 it could have been any clearer. 17 BY MR. SWEET: (Continued) 18 Q. And that's as specific as you can 19 get? 20 A. I've gotten more specific in my 21 discussions earlier and I'm not repeating the 22 entire sequence of dealings that I laid out, many 23 times. 24 Q. Do you recall Mr. Shaver telling you, 25 Mr. Berke - - prior to June 2005 - - that the</p>

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1 United States would not pay any money to the
2 Plaintiffs in connection with the 1933 Double
3 Eagles?

4 A. He most certainly did not tell me
5 that.

6 MR. SWEET: Can you give me five
7 minutes?

8 We may be done.

9 THE WITNESS: All right.

10 MR. SWEET: Do you want to wait
11 outside?

12 THE WITNESS: Yes.

13 (Recess: 6:53 p.m.)

14 (Resumed: 6:55 p.m.)

15 MR. SWEET: Just a couple of short
16 questions.

17 EXAMINATION (Continued)

18 BY MR. SWEET:

19 Q. Mr. Berke, in front of you is Berke
20 13.

21 (Sotheby/Stack's catalogue, so marked
22 Berke Exhibit 13 for identification by
23 counsel.)

24 Q. Do you recognize this?
25 (Handed to the witness.)

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1 A. The catalogue that was used for the
2 Sotheby/Stack's, S-T-A-C-K, catalogue that was used
3 for the auction of the Fenton coin.

4 Q. If you notice, Mr. Berke, on page 8,
5 you are thanked for your contribution.

6 Actually, page 9.

7 You're thanked for your contribution
8 in preparing this; correct?

9 A. Well, I think there are certain
10 people that are specifically thanked and I think
11 I'm included in the list of people who made
12 contributions.

13 Q. What was your contribution to this?

14 A. I mean, I'm reading, it says,
15 "Sotheby/Stack would like to thank and acknowledge
16 the following individuals for their valuable
17 assistance and advice, as well as permission to use
18 the archival materials."

19 Q. So, what was your role in this
20 document?

21 A. I think I already described, I made
22 documents available, provided documents that were
23 used here.

24 Q. You edited the text, as well?

25 A. I don't recall editing the text.

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1 Q. Let me point out, towards the back.
2 there's a chronology.

3 You participated in the editing of
4 the chronology?

5 A. I don't know that I participated in
6 the editing of it per se. I -- I'm sure I
7 reviewed it and may have made suggestions.

8 I don't recall whether I did or
9 didn't.

10 Q. Okay. If you saw information that
11 you thought was erroneous, you had the opportunity
12 to attempt to correct it; correct?

13 A. Again, the purpose of me reviewing it
14 wasn't to say this is the issue that the government
15 and Mr. Fenton disputed.

16 As I said previously, as a government
17 -- a government auction of the coin, which we
18 thought was the right to maximize the value of the
19 coins, we made the conscious decision, for Mr.
20 Fenton to fade in the background and we did not
21 think it was advisable, in terms of maximizing the
22 value of the coin, for Mr. Fenton to emphasize the
23 litigation, to emphasize the contested issues. So,
24 we understood that many of the facts that were
25 being used were obtained from government documents

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1 that were very much disputed as part of the
2 litigation but were used here as part of the story
3 that was being told by, in this case, David Tripp,
4 who was trying to tell us a story.

5 As I look through it, you can walk
6 through and tell what was contested and what was
7 not.

8 If there were things that I just
9 thought were -- that, for example, there's a date
10 of something else related to the coin that they
11 just got it wrong off the documents or missing
12 something, there seems to be something missing, I
13 may tell them.

14 But my principle reason for reading
15 it, as I think I mentioned a number of times at
16 this point, was to make sure there was nothing that
17 would -- that -- there's nothing that would
18 affect the marketing value of the coins, which was
19 largely information provided to me by my client,
20 which I relayed, and, to an extent, to make sure
21 there was nothing there that would impact
22 negatively on the reputation of Mr. Fenton and
23 then, as I say, there was some miscellaneous issues
24 that I recall addressing based on issues that had
25 come up in the litigation.

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1 Q. In says several places here -- if
2 you like, I can point them out to you -- that "the
3 coin that was being auctioned was the only one that
4 was -- that was authorized for private ownership."

5 You knew that statement would be in
6 there; correct?

7 A. I did.

8 There are a couple of things about
9 that and that was, again, management of the
10 marketing.

11 I think at some point in the process,
12 I believe it was David Pickens who thought it would
13 be good for the marketing of the coin if they
14 actually had a certificate monetizing the coin --
15 I thought this was his idea -- and as part of the
16 marketing plan and maximizing the value.

17 My memory, it was David Pickens who
18 came up with the idea.

19 I think there was a variety of things
20 to suggest to the bidders that at that point, that
21 the only Double Eagles that were meant to be
22 private were the two Double Eagles that were in the
23 hands of the Smithsonian and that the government
24 was authorizing and blessing this '33 Double Eagle.

25 I think that was a big part of the

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1 I recall David Pickens talking about it, whether it
2 came up in discussions he had with other people,
3 that this would be a good way, a good marketing
4 tool. It was never suggested this had to be done
5 in order for the coin to be sold.

6 That's my recollection.

7 MR. SWEET: No further questions.

8 MR. TIRSCHWELL: Okay; I have some
9 questions for you now.

10 Off the record.

11 (Off-the-record discussion between
12 counsel.)

13 MR. SWEET: Any time.

14 We've concluded?

15 MR. TIRSCHWELL: Yes.

16 MR. SWEET: All right

17 (Time noted: 7:03 p.m.)

18 * * *

19 BARRY BERKE

20
21 Subscribed and sworn to before me
22 this ____ day of ____ 2008.

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1 marketing of the coin at the time.

2 Q. And the -- if you look at page 8, at
3 the bottom, where it says, "Certificate"?

4 A. (Witness complies.)

5 Q. And think we can also look at -- at
6 Berke-3, the settlement agreement.

7 A. I'm sorry; Berke 3, the settlement
8 agreement?

9 Q. Yes. Let me ask you first. Do you
10 recall the settlement agreement referring to this
11 Double Eagle having to be monetized, the Fenton
12 Double Eagle?

13 (Witness reviews the exhibit.)

14 A. And the answer is I don't recall that
15 being in the settlement agreement.

16 But I'm reviewing the agreement now.

17 Q. I'll ask you a more open question.

18 A. I don't believe it's in the
19 agreement.

20 Q. You know that's one of the things
21 that had to happen before the Fenton coin was sold,
22 monetized?

23 A. I strongly disagree with that.

24 I recall the discussions quite
25 vividly as being an idea that had -- was shared.

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11 EXAMINATION BY: PAGE
12 Mr. Sweet 4

EXHIBITS		
FOR ID	DESCRIPTION	PAGE
16	BERKE EXHIBIT 1: Published Article, 8 pages.	18
17	BERKE EXHIBIT 2: Court Transcript, 2 pages.	25
18	BERKE EXHIBIT 3: Settlement Agreement, 5 pages.	49
19	BERKE EXHIBIT 4: Letter, dated September 21, 2004.	149
20	BERKE EXHIBIT 5: E-mails, 4 pages.	194
21	BERKE EXHIBIT 6: E-mail & Frequently Asked Question: 1933 Double Eagle document, 5 pages.	198
24	BERKE EXHIBIT 7: Letter, dated July 25, 2005.	223
25	BERKE EXHIBIT 8: Letter, dated September 9, 2005.	235

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1	BERKE EXHIBIT 9: Letter, dated December 6, 2005. 238	1	From _____ to _____
2	BERKE EXHIBIT 10: Letter, dated August 18, 2006. 244	2	Page _____ Line _____ Reason _____
3	BERKE EXHIBIT 11: Letter, dated June 29, 2006. 244	3	From _____ to _____
4	BERKE EXHIBIT 12: Letter, dated May 8, 2006. 250	4	Page _____ Line _____ Reason _____
5	BERKE EXHIBIT 13: Sotheby/Stack's Catalogue. 301	5	From _____ to _____
6		6	
7	REQUESTS: (None)	7	BARRY BERKE
8		8	
9		9	
10	CERTIFICATE	10	
11		11	
12	STATE OF NEW YORK)	12	
13	: ss:	13	
14	COUNTY OF NEW YORK)	14	
15	I, JOSEPH V. CONNOLLY, a Reporter and Notary	15	
16	Public for the State of New York, do hereby	16	
17	certify:	17	
18	That BARRY BERKE, the witness whose deposition	18	
19	is herein before set forth, was duly sworn by me	19	
20	and that such deposition is a true record of the	20	
21	testimony given by such witness.	21	
22	I further certify that I am not related to any	22	
23	of the parties to this action by blood or marriage	23	
24	and that I am in no way interested in the outcome	24	
25	of this matter.	25	

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1	In witness whereof, I have hereunto set my
2	hand this 14th day of May, 2008.
3	
4	JOSEPH V. CONNOLLY
5	REGISTRATION NO. 01C06174436
6	
7	
8	
9	NAME OF CASE: ROY LANGBORD, et al, vs. THE UNITED STATES
10	DEPARTMENT OF THE TREASURY, et al
11	DATE OF DEPOSITION: June 18, 2008
12	NAME OF WITNESS: Barry Berke
13	Codes:
14	1. To clarify the record.
15	2. To conform to the facts.
16	3. To correct transcription errors.
17	Page _____ Line _____ Reason _____
18	From _____ to _____
19	Page _____ Line _____ Reason _____
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